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SUPREME COURT, U.S.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

No. 376

THE PAINE DRUG COMPANY,
*Petitioner,*

*vs.*

THE PEOPLE OF THE STATE OF NEW YORK,
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE COUNTY COURT OF THE COUNTY OF MONROE, NEW YORK

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## PETITION FOR A WRIT OF CERTIORARI TO THE COUNTY COURT OF THE COUNTY OF MONROE, NEW YORK

Petitioner, The Paine Drug Company, prays that a writ of certiorari issue to review the judgment of the County Court of the County of Monroe, New York, rendered in the above entitled proceeding on June 19, 1963.

### Opinions Below

The opinion of the County Court of the County of Monroe, New York (R. 354-365), printed in Appendix A. hereto (infra, p. 15), is reported in 30 N. Y. Misc. 2d 834. The opinion of the Appellate Division, Supreme Court, State of New York (4th Dept.), (R. 374-377), printed in Appendix B. hereto infra p. 25), is reported in 22 N. Y. A. D.

2d 156. The Court of Appeals of New York affirmed the decision of the Appellate Division, but rendered no opinion. This judgment of the Court of Appeals, printed in Appendix C. hereto (infra p. 30), is reported in 16 N. Y. 2d 503.

## Jurisdiction

The petitioner was accused of violating Sections 2140, 2141, and 2147 of the Penal Law of the State of New York by an indictment filed in the office of the clerk of the County of Monroe on December 21, 1962. The petitioner moved the County Court of the County of Monroe, New York for an order dismissing said indictment on February 11, 1963, and testimony was taken and evidence received in connection with said motion. On June 19, 1963 the County Court rendered an opinion and decision granting said motion and an order in accordance therewith was duly made and entered on June 21, 1963, in the office of the clerk of Monroe County.

The respondent thereafter appealed to the Appellate Division, Supreme Court, State of New York, (4th Dept.) by notice of appeal dated December 16, 1964 (R. 371, 372). An order of the Appellate Division reversing the order of the County Court was entered on December 3, 1964.

Thereafter, the petitioner appealed the order of the Appellate Division to the Court of Appeals of New York. Judgment affirming the order appealed from and remitting the record to the County Court was made and entered on April 22, 1965. The remittitur was filed in the Office of the clerk of the County of Monroe, New York on May 4, 1965.

The jurisdiction of this Court is invoked under 28 U.S.C. Sect. 1257 (3).

## Questions Presented

1. Should private citizens be permitted to invoke, for reasons of economic competition, the sanctions of an ancient and long ignored penal statute to bring about the arrest and prosecution of a certain class of their business rivals while conceding that they neither seek nor wish general enforcement?

2. Granting that the discriminatory enforcement prohibited by the Fourteenth Amendment to the Constitution of the United States must be purposeful, what is the nature and extent of this motivation and must it be that of a public official?

3. To what extent does the conscious, deliberate non-enforcement of a state penal law by public authorities which permits discrimination by private citizens to occur support the defense of discriminatory law enforcement?

## Constitutional and Statutory Provisions Involved

Constitution of the United States, Amendment XIV, Section 1:

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New York Penal Law, Section 2140:

Sect. 2140. The Sabbath.

The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the